HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4050 of 2001
Date of decision : 30.5..2007

Manohar Lal **.....Appellant**

versus

Ved Parkash and another **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Vikram Bali, Advocate for the appellant.
Mr.B.S.Saini, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby a suit for possession of a shop and godown was decreed in appeal. The defendant is brother of the plaintiff.

It is the case of the plaintiff that the defendant entered into possession of the premises in dispute forcibly and therefore, he is not entitled to retain possession of the same. The learned trial Court dismissed the suit holding that the suit is barred under Order 9 Rule 9 of the Code of Civil Procedure as earlier the plaintiff's suit for mandatory injunction was dismissed in default. However, the learned First Appellate Court reversed the said finding holding that the suit is not barred. It was held that earlier suit was for mandatory injunction, whereas the present suit is for possession. It was also found that defendant has not taken the objections of the suit as being barred in terms of Order 9 Rule 9 of the

Code of Civil Procedure and no copy of the plaint, written statement, replication or issues has been filed on the record. It is also found that the decision of the suit for mandatory injunction in default will not bar the suit for possession.

Learned counsel for the appellant has vehemently argued before this Court that the earlier suit was dismissed in default on the basis of compromise and therefore, the plaintiff is estopped to file the present suit for possession, apart from the fact that the suit itself is barred. However, I do not find any substance in the argument raised by learned counsel for the appellant. The earlier suit for mandatory injunction stands on different cause of action than the present suit for possession which is based on title. The defendant has failed to prove the alleged compromise. The document of compromise has not been produced in evidence as such document is marked only. In the absence of proof of document, the plea of defendant that the suit was got dismissed in default on the basis of compromise cannot be sustained.

In view of the above, I do not find that the findings recorded by the learned First Appellate Court are suffering from any patent illegality or irregularity which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

May 30, 2007
**mohinder*